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7 UNITED STATES DISTRICT COURT

8 CENTRAL DISTRICT OF CALIFORNIA

9 WESTERN DIVISION

10 Kevin Thobias,

Case No.

11 Plaintiff,

**Complaint for Breach of
Contract; Conversion;
Violation of the CFAA, 18
U.S.C. § 1030; Violation of
the ECPA, 18
U.S.C. §2510; Unjust
Enrichment; Breach of the
Implied Covenant of Good
Faith and Fair Dealing;
Negligence; and Anticipatory
Breach**

12 vs.

13 Boosted Ecommerce, Inc. and
Boosted NRF Corp.,

14 Defendants.

17 DEMAND FOR JURY TRIAL

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19

20

1 Plaintiff Kevin Thobias (“Plaintiff”) alleges against Defendants
2 Boosted Ecommerce, Inc. and Boosted NRF Corp. as follows:

3 **JURISDICTION & VENUE**

4 1. Subject matter jurisdiction is invoked pursuant to 28 U.S.C. §
5 1332 because the amount in controversy exceeds seventy-five thousand
6 U.S. Dollars (\$75,000.00), and this action is between a resident of the State
7 of Florida as plaintiff and corporate citizens of the State of California as
8 defendants.

9 2. Venue is proper in this district pursuant to 28 U.S.C. §
10 1391(b)(2) because the events giving rise to this action occurred in this
11 district.

12 **THE PARTIES**

13 3. Plaintiff Kevin Thobias is an individual residing in Miami,
14 Florida.

15 4. Defendant Boosted Ecommerce, Inc. (“Boosted”) is a
16 corporation formed under the laws of the State of Delaware, with its last
17 known principal place of business located at 430 Dalehurst Ave., Los
18 Angeles, California 90024. Boosted is a corporate citizen registered to
19 conduct business in the State of California.

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1 5. Defendant Boosted NRF Corp. (“Boosted NRF”) is a
2 corporation formed under the laws of the State of Delaware, with its last
3 known principal place of business located at 430 Dalehurst Ave., Los
4 Angeles, California 90024, and its Delaware registered agent located at
5 Registered Agent Solutions, Inc., 838 WALKER ROAD SUITE 21-2,
6 Dover, Delaware 19904. Boosted NRF conducts business in the State of
7 California.

PLAINTIFF'S CASE IN BRIEF

9 6. On December 31, 2020, Plaintiff entered into an Asset Purchase
10 Agreement (the “Agreement”) in which he agreed to sell certain assets to
11 Boosted in exchange for cash.

12 7. For its part, Boosted agreed to make a series of payments to
13 Plaintiff, for a total sum of up to \$16,000,000, in accordance with a
14 schedule contained in the Agreement.

15 8. Prior to executing the Agreement, in accordance with Boosted's
16 due diligence requests, Plaintiff granted Boosted viewing access only to
17 certain proprietary information, including: (a) login information for two
18 Amazon seller accounts using the seller names "Ajacl" and "Keto Friendly
19 Seller;" (b) related information; and (c) the Private Email Account

1 (collectively the “Plaintiff Assets”) that were not to be included in the
2 parties’ deal.

3 9. Plaintiff entrusted Boosted with viewing access only to Plaintiff
4 Assets for the sole purpose of due diligence, and Boosted’s viewing access
5 to the Plaintiff Assets was limited to the deal’s inspection period, which
6 ended on January 31, 2021.

7 10. After the inspection period, Boosted knowingly and unlawfully
8 seized the Plaintiff Assets and prevented Plaintiff from accessing Plaintiff
9 Assets.

10 11. Boosted changed the password and/or verification code of
11 Plaintiff’s Amazon accounts, hacked Plaintiff’s private email address,
12 albertjackson6988@gmail.com (the “Private Email Account”), and began to
13 use Plaintiff Assets for their own benefit to sell goods on the Amazon
14 platform.

15 12. Boosted has continued to use Plaintiff Assets, without
16 authorization, both after the inspection period, and after Plaintiff demanded
17 several times that Boosted return and restore Plaintiff’s access and control
18 over Plaintiff Assets.

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1 13. Further, on or about June 30, 2022, Boosted breached the
2 Agreement by failing to pay \$625,000 to Plaintiff pursuant to the payment
3 schedule outlined in the Agreement (the “June Payment”).

4 14. On or about July 5, 2022, Plaintiff discovered that Boosted
5 assigned the Agreement to Boosted NRF without notice in further breach of
6 the Agreement.

STATEMENT OF FACTUAL ALLEGATIONS

8 15. Over the course of the past decade, Plaintiff has established
9 several successful businesses as a merchant selling various products to third
10 parties via Amazon.com “seller accounts,” which are independent
11 businesses operating on Amazon’s seller platform.

12 16. On or about October 2020, Boosted was introduced to Plaintiff
13 to inquire regarding a potential sale of certain seller accounts, and other
14 associated tangible and intangible assets, to Boosted in exchange for cash.

15 17. On or about November 2020, Boosted and Plaintiff began
16 negotiating the terms of the Agreement.

17 18. On or about December 9, 2020, Plaintiff entrusted Boosted with
18 viewing access only to Plaintiff Assets, which were not intended to be part
19 of the deal between the parties, for the sole purpose of due diligence and the

1 inspection period ending January 31, 2021, as provided in Section 3.3 of the
2 Agreement.

3 19. On or about December 31, 2020, Plaintiff and Boosted entered
4 into the Agreement.

5 20. Pursuant to the Agreement, Plaintiff timely transferred to
6 Boosted all assets purchased pursuant to the Agreement (the “Purchased
7 Assets”).

8 21. The Plaintiff Assets were not purchased by Boosted under the
9 Agreement.

10 22. Upon execution of the Agreement Boosted confirmed to
11 Plaintiff that the Plaintiff Assets were not included as Purchased Assets.

12 23. The Agreement required Boosted to make payments to Plaintiff
13 in an amount and according to Agreement Disclosure Schedule 2.04.

14 24. The Agreement Disclosure Schedule 2.04 obliges Boosted to
15 pay Plaintiff \$2,500,000 at the end of the inspection period.

16 25. The Agreement Disclosure Schedule 2.04 obliges Boosted to
17 pay Plaintiff \$5,000,000 on or before June 30, 2021.

18 26. The Agreement Disclosure Schedule 2.04 obliges Boosted to
19 pay Plaintiff \$2,500,000 on December 31, 2021.

1 27. The Agreement Disclosure Schedule 2.04 obliges Boosted to
2 pay Plaintiff \$2,500,000 in 2022 via four (4) quarterly payments of
3 \$625,000.00 on March 31, 2022, June 30, 2022, September 30, 2022, and
4 December 31, 2022.

5 28. Lastly, the Agreement Disclosure Schedule 2.04 obliges
6 Boosted to pay Plaintiff up to \$3,500,000 within 30 days of December 31,
7 2022 based on a calculation provided in the disclosure schedule.

8 29. Thus, Agreement Disclosure Schedule 2.04 obliges Boosted to
9 pay Plaintiff a total amount of up to \$16,000,000.

10 30. Section 3.3 of the Agreement provides “Buyer shall destroy or
11 return all information provided to Buyer in connection with Buyer’s due
12 diligence and inspection.”

13 31. Thus, Boosted had an obligation to destroy or return all
14 information provided to Buyer in the Agreement in connection with
15 Buyer’s due diligence and inspection.

16 32. Boosted failed to return or destroy the information relating to
17 the Plaintiff Assets after the inspection period closed on January 31, 2021.

18 33. Further, Boosted exceeded the permissible viewing access and
19 actually accessed the Plaintiff Assets after the inspection period had closed,
20 and began to use the Plaintiff Assets to sell its products.

1 34. The Plaintiff Assets included Amazon seller accounts. Seller
2 accounts are valuable property, since Customers often return to buy
3 products from seller accounts they know to operate in a trustworthy and
4 businesslike manner, and companies such as Boosted seek to buy successful
5 seller accounts to expand their own businesses, taking advantage of the fact
6 that a successful seller account is already a viable business with an
7 established place in the market and significant built-in customer goodwill.

8 35. Additionally, the Amazon algorithm allows for more successful
9 and established accounts to rank higher on the platform when a customer
10 searches for a product (effectively driving more customer traffic), so
11 companies such as Boosted seek to buy successful seller accounts to take
12 advantage of the seller accounts' traffic due its rank and the algorithm.

13 36. In late 2021, Plaintiff tried to use Plaintiff Assets for his own
14 business purposes; however, Plaintiff was unable to access the Plaintiff
15 Assets.

16 37. In an attempt to mitigate damages from this lack of access,
17 Plaintiff opened another Amazon account for his business.

18 38. Also, Plaintiff began to investigate why he was unable to access
19 the Plaintiff Assets.

1 39. Plaintiff's investigation led him to discover that someone was
2 selling various products on the Amazon accounts included in Plaintiff
3 Assets.

4 40. Shortly after the discovery of the unauthorized access to the
5 Plaintiff Assets, Plaintiff received a contractual offer from Boosted to
6 purchase Plaintiff Assets.

7 41. In fact, on or about October 2021, Boosted reached out to
8 Plaintiff seeking to purchase the Plaintiff Assets.

9 42. The parties did not reach an agreement to transfer the Plaintiff
10 Assets.

11 43. Plaintiff thus learned that Boosted had exceeded viewing access
12 to his Private Email Account and reset the passwords and/or added certain
13 verification codes, so that Plaintiff could not access the Private Email
14 Account.

15 44. Boosted had also reset the login password and/or added certain
16 verification codes to the Amazon "Ajacl" account, which made it
17 impossible for Plaintiff to access the account.

18 45. Boosted also reset the login password and/or added certain
19 verification codes to the Amazon "Keto Friendly Seller" account, which
20 made it impossible for Plaintiff to access the account.

1 46. Boosted did not tell Plaintiff of their implementation of the new
2 password(s) and/or added verification code(s) to any of the Plaintiff Assets.

3 47. Boosted did not provide the new password(s) and/or added
4 verification code(s) to Plaintiff, and has refused to do so to date.

5 48. On or about May 2022, Plaintiff demanded access to the
6 Plaintiff Assets.

7 49. A Boosted employee, Adam Epstein, denied Plaintiff's request
8 and refused to provide Plaintiff with access to the Plaintiff Assets.

9 50. At this time, Adam Epstein confirmed to Plaintiff that Boosted
10 had used the Plaintiff Assets to sell products on the Amazon platform for
11 Boosted's own benefit.

12 51. Plaintiff did not authorize Boosted's access to and utilization of
13 the Plaintiff Assets after the inspection period.

14 52. Boosted's use of the Plaintiff Assets for sales activities
15 exceeded the viewing access scope of use authorized by Plaintiff from the
16 time Boosted was entrusted with the Plaintiff Assets during the due
17 diligence and inspection periods.

18 53. Boosted has confirmed to Plaintiff that, from October 1, 2021
19 through May 30, 2022, Boosted generated over \$1,500,000 from use of the
20 Plaintiff Assets.

1 54. On or about June 21, 2022, Plaintiff requested for Boosted to
2 provide the status of the June Payment.

3 55. In response, Boosted notified Plaintiff that they would not
4 make the June Payment.

5 56. Boosted failed to provide the Plaintiff with the required written
6 notice in accordance with the terms of the Agreement.

7 57. On or about July 1, 2022, Plaintiff provided Boosted with a
8 written demand for the June Payment and for a return and restoration of
9 Plaintiff Assets.

10 58. In response, Boosted repeated to Plaintiff that they do not
11 intend to render the payment due on June 30, 2022 pursuant to the
12 Agreement and that they will not return Plaintiff Assets.

13 59. To date, Boosted has failed to make the June Payment and
14 failed to return Plaintiff Assets.

15 60. Boosted has further notified Plaintiff that it will continue to
16 exceed viewing access to Plaintiff Assets and actually use Plaintiff Assets
17 for the benefit of Boosted and Boosted NRF without Plaintiff's
18 authorization.

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1 61. On or about July 5, 2022, Plaintiff discovered that Boosted
2 assigned the Agreement to Boosted NRF without notice in further breach of
3 Section 10.7 of the Agreement.

4 62. Section 10.7 of the Agreement states: "Neither party hereto
5 may assign its rights or obligations hereunder without the prior written
6 consent of the other party, which consent shall not be unreasonably
7 withheld or delayed. No assignment shall relieve the assigning party of any
8 of its obligations hereunder. Notwithstanding anything to the contrary in
9 this Agreement, Buyer may assign its rights to an affiliate or wholly owned
0 subsidiary on notice to, but without the consent of, Seller."

FIRST CLAIM FOR RELIEF

BREACH OF CONTRACT

(Against Boosted and Boosted NRF)

14 63. Plaintiff realleges and incorporates by reference the allegations
15 set forth in each paragraph above as if fully set forth herein.

16 65. The Agreement was a contract between Plaintiff and Boosted
17 pursuant to which Boosted agreed to make certain payments to Plaintiff in
18 exchange for the Purchased Assets.

19 66. Plaintiff fully performed its obligations by transferring the
20 Purchased Assets to Boosted, in conformance with the Agreement.

1 67. Defendants breached the Agreement by failing to timely make
2 payments to Plaintiff, in particular the June Payment.

3 68. To date, Defendants have failed and refused, and continue to
4 refuse, to make the June Payment.

5 69. Further, under Section 3.3 of the Agreement, Boosted was
6 obliged to destroy or return all of the information provided by Plaintiff with
7 respect to the Plaintiff Assets after the close of the inspection period.

8 70. To date, Defendants failed to destroy or return the information
9 provided by Plaintiff with respect to the Plaintiff Assets.

10 71. Defendants failure to destroy the Plaintiff Asset information or
11 return the Plaintiff Assets to Plaintiff prevented Plaintiff from further use of
12 the Plaintiff Assets.

13 72. In further breach of Section 10.7 of the Agreement, Boosted
14 assigned the Agreement to Boosted NRF without providing Plaintiff with
15 the required notice.

16 73. Boosted NRF had an obligation to perform in accordance with
17 the Agreement.

18 74. In addition to not returning the Plaintiff Assets to Plaintiff,
19 Boosted and Boosted NRF used the Plaintiff Assets for their own benefit by

1 selling products via the Ajacl and Keto Friendly Seller accounts, and
2 retaining the proceeds of such sales.

3 75. Consequently, Boosted and Boosted NRF caused Plaintiff to
4 lose sales opportunities and profits, namely sales via use of the Plaintiff
5 Assets.

6 76. Plaintiff has suffered harm as a result of Defendants' material
7 breaches of the Agreement and is therefore entitled to damages.

8 **SECOND CLAIM FOR RELIEF**

9 **CONVERSION**

10 (Against Boosted and Boosted NRF)

11 77. Plaintiff realleges and incorporates by reference the allegations
12 set forth in each paragraph above as if fully set forth herein.

13 78. On or about December 9, 2020, Plaintiff entrusted Boosted with
14 access to the Plaintiff Assets.

15 79. The Plaintiff Assets included a Private Email Account used to
16 manage the "Ajacl" and "Keto Friendly Seller" accounts.

17 80. The Plaintiff provided Boosted with viewing access to the
18 Plaintiff Assets for the sole purpose of providing information during the due
19 diligence and inspection period. The Agreement acknowledges that Plaintiff
20 entrusted Boosted with viewing access to the Plaintiff Assets for the sole

1 purpose of providing information during the due diligence and inspection
2 period.

3 81. On or after the inspection period, Boosted and Boosted NRF
4 changed the password to the Private Email Account used to manage the
5 Ajacl and Keto Friendly Seller accounts.

6 82. Boosted and Boosted NRF also changed the password(s) and/or
7 verification information for these seller accounts.

8 83. By changing the password to the private e-mail account,
9 Boosted and Boosted NRF knowingly prevented Plaintiff from having
10 access to the Plaintiff Assets and converted the Plaintiff Assets to their own
11 use.

12 84. Plaintiff maintained the primary right to possess the Plaintiff
13 Assets at all times.

14 85. Plaintiff retained the sole right to sell products with the use of
15 the Plaintiff Assets at all times.

16 86. Plaintiff did not sell the Plaintiff Assets to Boosted at any time.

17 87. Boosted and Boosted NRF were aware of Plaintiff's ownership
18 of the Plaintiff Assets and that Plaintiff only provided viewing access to the
19 Plaintiff Assets and related information for the sole purpose of due
20 diligence during the inspection period.

1 88. Plaintiff did not consent to Boosted or Boosted NRF retaining
2 access to the Plaintiff Assets or related information past the close of the
3 inspection period.

4 89. Further, on or about May 2022, Plaintiff demanded that Boosted
5 return the Plaintiff Assets

6 90. Plaintiff has demanded a return of the Plaintiff Assets several
7 time since May 2022, but to no avail.

8 91. Boosted's and Boosted NRF's refusal to transfer possession of
9 the Plaintiff Assets back to Plaintiff has deprived and continues to deprive
0 Plaintiff of the use of the Plaintiff Assets, while Boosted and Boosted NRF
1 continue to use the Plaintiff Assets for their own benefit.

12 92. As a result of Boosted's and Boosted NRF's conversion,
13 Plaintiff has suffered substantial damages, and is continuing to suffer
14 damages as of the date of this writing.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT

(Against Boosted and Boosted NRF)

18 93. Plaintiff realleges and incorporates by reference the allegations
19 set forth in each paragraph above as if fully set forth herein

1 94. Amazon.com maintains a network of computers and servers
2 that store information and data related to the Plaintiff Assets, and allows
3 Plaintiff to engage in interstate and foreign commerce and communication.
4 As such, Amazon owns and maintains one or more “protected computers” as
5 defined in the Computer Fraud and Abuse Act.

6 95. Google maintains a network of computers and servers that store
7 information and data related to the Plaintiff Assets, and allow Plaintiff to
8 engage in interstate and foreign commerce and communication. As such,
9 Amazon owns and maintains one or more “protected computers” as defined
10 in the Computer Fraud and Abuse Act.

11 96. Plaintiff provided Boosted with viewing access to the Plaintiff
12 Assets for the sole purpose of disclosing information during the due
13 diligence and inspection period.

14 97. By refusing to return the Plaintiff Assets, and by commandeering
15 the Plaintiff Assets for its own use, Boosted and Boosted NRF exceeded the
16 scope of viewing access and generally accessed the Plaintiff Assets without
17 authorization and/or beyond the scope authorized by Plaintiff.

18 98. While entrusted with viewing access to the Plaintiff Assets,
19 Boosted and Boosted NRF changed the password to the Private Email
20

1 Account, knowingly altering information in the computer that they did not
2 have a right to alter.

3 99. Further, Boosted and Boosted NRF used the Private Email
4 Account to manage and sell from Plaintiff's Amazon seller accounts, Ajacl
5 and Keto Friendly Seller, without authorization.

6 100. Boosted intentionally accessed and used protected computers
7 without authorization, or in excess of its authority, in violation of 18 U.S.C.
8 §§ 1030 (a)(2)(C) and 1030 (a)(5)(c).

9 101. By accessing, without authorization, or in excess of its
10 authorization, the computers and servers of the accounts maintained by
11 Plaintiff, Boosted has obtained information from such protected computers
12 in violation of 18 U.S.C. §§ 1030 (a)(2)(c) and 1030 (a)(5)(c).

13 102. Boosted NRF intentionally accessed and used protected
14 computers without authorization, or in excess of its authority, in violation of
15 18 U.S.C. §§ 1030 (a)(2)(C) and 1030 (a)(5)(c).

16 103. By accessing, without authorization, or in excess of its
17 authorization, the computers and servers of the accounts maintained by
18 Plaintiff, Boosted NRF has obtained information from such protected
19 computers in violation of 18 U.S.C. §§ 1030 (a)(2)(c) and 1030 (a)(5)(c).

1 104. The Computer Fraud and Abuse Act, 18 USC §1030(g),
2 provides a civil cause of action to “any person who suffers damage or loss”
3 as a result of a violation of the CFAA.

4 105. As a result of Boosted's and Boosted NRF's conduct, Plaintiff
5 has suffered damages and/or loss in excess of \$5,000 in the year preceding
6 the date of this filing.

FOURTH CLAIM FOR RELIEF

VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY

ACT

(Against Boosted and Boosted NRF)

11 106. Plaintiff realleges and incorporates by reference the allegations
12 set forth in each paragraph above as if fully set forth herein.

13 107. Boosted and Boosted NRF intentionally accessed Plaintiff's
14 electronic communications without authorization and/or in excess of any
15 authorization from Plaintiff.

16 108. The Electronic Communications Privacy Act of 1986, 18
17 U.S.C. § 2510, regulates wire and electronic communications interception
18 and interception of oral communications, and makes it unlawful for a
19 person to “willfully intercept, endeavor to intercept, or procure any other

1 person to intercept or endeavor to intercept, any wire, oral, or electronic
2 communication,” within the meaning of 18 U.S.C. § 2511(1).

3 109. Boosted violated 18 U.S.C. § 2511 by intentionally acquiring
4 and/or intercepting, by device or otherwise, Plaintiff’s electronic
5 communications, without knowledge, consent, or authorization.

6 110. Boosted NRF violated 18 U.S.C. § 2511 by intentionally
7 acquiring and/or intercepting, by device or otherwise, Plaintiff’s electronic
8 communications, without knowledge, consent, or authorization.

9 111. The contents of data transmissions from and to the Plaintiff
10 Assets constitutes “electronic communications” within the meaning of 18
11 U.S.C. §2510.

12 112. Plaintiff is a “person[s] whose ... electronic communication is
13 intercepted ... or intentionally used in violation of this chapter” within the
14 meaning of 18 U.S.C. § 2520.

15 113. Boosted and Boosted NRF violated 18 U.S.C. § 2511(1)(a) by
16 intentionally intercepting, endeavoring to intercept, or procuring any other
17 person to intercept or endeavor to intercept Plaintiff’s electronic
18 communications.

19 114. The Electronic Communications Privacy Act of 1986, 18 USC
20 §2520(a), provides a civil cause of action to “any person whose wire, oral,

1 or electronic communication is intercepted, disclosed, or intentionally used”
2 in violation of the ECPA.

3 115. Boosted and Boosted NRF are liable directly and vicariously
4 for this cause of action.

5 116. Plaintiff therefore seeks those remedies provided for by 18
6 U.S.C. §2520, including such preliminary and other equitable or declaratory
7 relief as may be appropriate, damages consistent with subsection (c) of that
8 section to be proven at trial, punitive damages to be proven at trial, and
9 reasonable attorneys’ fees and other litigation costs reasonably incurred.

10 117. Plaintiff has additionally suffered loss by reason of these
11 violations, including, without limitation, violation of the right of privacy,
12 which is ongoing.

13 118. Pursuant to 18 U.S.C. §2520, Plaintiff is entitled to preliminary,
14 equitable, and declaratory relief, in addition to statutory damages of the
15 greater of \$10,000 or \$100 a day for each day of violation, actual and
16 punitive damages, reasonable attorneys’ fees, and Boosted’s or Boosted
17 NRF’s profits obtained from the above-described violations.

18 **FIFTH CLAIM FOR RELIEF**

19 **UNJUST ENRICHMENT**

20 (Against Boosted and Boosted NRF)

1 119. Plaintiff realleges and incorporates by reference the allegations
2 set forth in each paragraph above as if fully set forth herein.

3 120. Plaintiff entrusted Boosted with the Plaintiff Assets.

4 121. Boosted took possession of the Plaintiff Assets

5 122. Boosted and Boosted NRF deprived the Plaintiff of any use of
6 the Plaintiff Assets, which were property that rightfully belonged to the
7 Plaintiff.

8 123. Boosted and Boosted NRF did not provide any consideration
9 for the Plaintiff Assets to Plaintiff.

10 124. Boosted and/or Booster NRF used the Plaintiff Assets without
11 Plaintiff's authorization.

12 125. Boosted and Boosted NRF used the Plaintiff Assets for its own
13 benefit and generated over \$1,500,000 of sales from the unauthorized use of
14 the Plaintiff Assets.

15 126. It would be inequitable and unconscionable to allow Boosted
16 and Boosted NRF to retain and profit from Plaintiff's property without
17 payment to Plaintiff.

18 127. Boosted and Boosted NRF have no legal or equitable right,
19 claim or interest to the Plaintiff Assets.

1 128. As a result, Boosted and Boosted NRF were unjustly enriched
2 at Plaintiff's expense and should return the Plaintiff Assets and profits
3 earned from such Plaintiff Assets.

SIXTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(Against Boosted and Boosted NRF)

8 129. Plaintiff realleges and incorporates by reference the allegations
9 set forth in each paragraph above as if fully set forth herein.

10 130. California law implies a covenant of good faith and fair dealing
11 in all contracts between parties entered into in the State of California. This
12 covenant provides that each party will act in good faith and deal fairly with
13 one another and do nothing that deprives the other party of the benefits of
14 the contract.

131. Boosted and Boosted NRF breached the covenant of good faith
132 and fair dealing implied in the Agreement by, among other things, (a)
133 failing to render the June Payment to Plaintiff in the amount of \$625,000
134 pursuant to the Agreement, (b) depriving Plaintiff of use of the Plaintiff
135 Assets, and (c) using the Plaintiff Assets beyond the viewing access scope
136 permitted by Plaintiff.

1 132. Plaintiff has performed all obligations required under the
2 Agreement, except any obligations for which performance has been
3 excused.

4 133. Boosted's and Boosted NRF's breach of the implied covenant
5 of good faith and fair dealing have caused Plaintiff to suffer damages.

SEVENTH CLAIM FOR RELIEF

NEGLIGENCE

(Against Boosted and Boosted NRF)

134. Plaintiff realleges and incorporates by reference the allegations set forth in each paragraph above as if fully set forth herein.

11 135. Boosted and Boosted NRF owed a duty to Plaintiff—arising
12 from the sensitivity and value of Plaintiff Assets and the foreseeability of
13 harm to Plaintiff should Boosted or Boosted NRF fail to safeguard and
14 protect such assets—to exercise reasonable care in safeguarding Plaintiff
15 Assets.

16 136. Boosted and Boosted NRF had an additional duty to Plaintiff to
17 maintain the privacy of the information related to Plaintiff Assets.

18 137. Federal law and regulations, as well as the Agreement,
19 acknowledge Boosted's and Boosted NRF's duty to adequately protect
20 Plaintiff Assets and related information.

1 138. Boosted and Boosted NRF owed a duty to Plaintiff to protect
2 his sensitive and valuable assets from unauthorized use, access, or
3 disclosure.

4 139. Plaintiff's willingness to entrust Boosted with his valuable
5 confidential information related to Plaintiff Assets, was predicated on the
6 understanding that Boosted and its assignees and their agents would
7 undertake adequate care to secure Plaintiff Assets from unauthorized use.

8 140. But for Boosted's and Boosted NRF's breaches of their duties,
9 Plaintiff Assets would not have been used in an unauthorized manner that
10 ultimately deprived Plaintiff of using Plaintiff Assets.

11 141. Plaintiff was a foreseeable victim of Boosted's and Boosted
12 NRF's unauthorized use of the Plaintiff Assets.

13 142. Boosted and Boosted NRF knew or should have known that
14 unauthorized access would cause damage to Plaintiff.

15 143. Boosted's and Boosted NRF's negligent conduct provided a
16 means for unauthorized access to Plaintiff Assets that ultimately deprived
17 Plaintiff from use of Plaintiff Assets while using Plaintiff Assets for their
18 own benefit.

19 144. As a result of Boosted's and Boosted NRF's failure to prevent
20 unauthorized access of Plaintiff Assets, Plaintiff suffered damages that

1 arose out of Boosted's and Boosted NRF's breach of their legal duties. The
2 damages Plaintiff suffered were a proximate, reasonably foreseeable result
3 of Boosted's and Boosted NRF's breaches of their duties.

4 145. Therefore, Plaintiff is entitled to damages in an amount to be
5 proven at trial.

6 146. The injury and harm suffered by Plaintiff was the reasonably
7 foreseeable result of Boosted's and Boosted NRF's failure to exercise
8 reasonable care in safeguarding and protecting Plaintiff Assets.

9 147. In addition, Boosted's and Boosted NRF's misconduct as
10 alleged herein is malice, fraud or oppression under Civil Code § 3294(c)(1)
11 and (2) in that it was despicable conduct carried on by Boosted and Boosted
12 NRF with a willful and conscious disregard of the rights of Plaintiff. As a
13 result, Plaintiff is also entitled to punitive damages against Boosted and
14 Boosted NRF under Civil Code § 3294(a).

15 **EIGHTH CLAIM FOR RELIEF**

16 **ANTICIPATORY BREACH**

17 (Against Boosted and Boosted NRF)

18 148. Plaintiff realleges and incorporates by reference the allegations
19 set forth above in each paragraph of this Complaint as if fully set forth
20 herein.

1 149. Pursuant to Agreement Disclosure Schedule 2.04, Boosted
2 agreed to provide Plaintiff payment in accordance with the amount and date
3 provided in the schedule.

4 150. Boosted and Boosted NRF have repudiated Plaintiff's right to
5 receive payment under the Agreement Disclosure Schedule 2.04, which has
6 not been retracted.

7 151. As a result of Defendant's anticipatory breach of the agreed
8 the Agreement, Plaintiff has been damaged in an amount that exceeds
9 \$1,875,000 pursuant to the Agreement.

10 152. Plaintiff has been forced to retain an attorney to prosecute this
11 action, and is therefore entitled to an award of reasonable attorney's fees
12 and costs incurred herein.

PRAYER

14 153. WHEREFORE, Plaintiff prays for judgment against Defendants
15 as follows:

16 a. For an award of actual damages in an amount to be proven at
17 trial:

18 b. For an award of exemplary and punitive damages;

19 c. For an award of treble damages in accordance with CA Penal
20 Code 496(c)

1 d. For an award of attorney's fees and reasonable costs, as
2 applicable;

3 e. For pre- and post-judgment interest, as applicable; and

4 f. For such other and further relief as the Court deems just and
5 appropriate.

DEMAND FOR JURY TRIAL

7 Plaintiff hereby demands a jury trial on all claims, damages and any other
8 issues presented herein that are triable to a jury.

Dated: July 8, 2022

WOLFFERS COHEN & EDDERAI LLP

By: /s/ Berwin Cohen
Berwin Cohen
Attorney for Plaintiff